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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/608,637

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Kestutis Patiejunas

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01/28/2008

SHOOK, HARDY & BACON L.L.P.

(c/o MICROSOFT CORPORATION)

INTELLECTUAL PROPERTY DEPARTMENT

2555 GRAND BOULEVARD

KANSAS CITY, MO 64108-2613

EXAMINER

AVELLINO, JOSEPH E

ART UNIT

PAPER NUMBER

2143

MAIL DATE

DELIVERY MODE

01/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/608,637

Applicant(s)

PATIEJUNAS, KESTUTIS

Examiner

Joseph E. Avellino

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

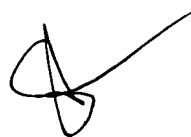
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1-16,19-21,23-31,34-49,52-54,56-62,64-66,80-84,87-89,91-98,100-102,104-110,113-120,135,136,144 and 146-148.

Continuation of Disposition of Claims: Claims rejected are 1-16,19-21,23-31,34-49,52-54,56-62,64-66,80-84,87-89,91-98,100-102,104-110,113-120,135,136,144 and 146-148.

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DETAILED ACTION

1. Claims 1-16, 19-21, 23-31, 34-49, 52-54, 56-62, 64-66, 80-84, 87-89, 91-98, 100-102, 104-110, 113-120, and 135, 136, 144, and 146-148 are pending in this examination; claims 1, 34, 80, 93, 107, and 135 independent. The Office acknowledges the cancellation of claims 17-18, 32-33, 50-51, 63, 85-86, 90, 99, 103, 111-112, 137-143, and 145.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-16, 19-21, 23-31, 34-49, 52-54, and 58-62, and 64-66, are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton (US 2003/0204856) in view of Kim et al (US 2002/0129375) (hereinafter Kim) in view of Lockridge et al. (US 2006/0156357) (hereinafter Lockridge).

3. Referring to claim 1, Buxton discloses a system for managing the transmission of distributable content (e.g. abstract), comprising:

a collection engine (i.e. local processing units 106) configured to receive distributable content from at least one content provider (i.e. database server 104 and backup media server 118) via a first network (i.e. fiber line 102) and to process subscriber requests (i.e. able to send information from the local units to the client

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devices; “the transaction information...may be effected by the user’s local processing unit”) for the distributable content (e.g. abstract; Figure 1; Figure 4, ref. 416; p. 1, ¶ 10; p. 4, ¶ 33);

content storage, communicating with the collection engine to store the distributable content (i.e. storage within the local node to store movies) (p. 2, ¶ 19); and an interface to a second network communicating with a subscriber (i.e. residential gateway or set top box 108), the subscriber selectively receiving the distributable content from the collection storage via the second network (i.e. via the connection between the local node and the set top box) based on each subscriber request corresponding to the subscriber (i.e. each request for content made by the subscriber is sent to the subscribers set top box (Figures 4 and 5, ref. 402; p. 4, ¶ 34; p. 5, ¶ 43).

Buxton does not explicitly disclose that the distributable content is updated at specified intervals based on usage demand for the distributable content. In analogous art, Kim discloses another video-on-demand system which discloses updating popular (i.e. popular content being defined as those videos which are more in demand) content monthly (Figure 4, ref. 404, 412; p. 5, ¶ 70). It would have been obvious to one of ordinary skill in the art to combine the teachings of Kim with Buxton in order to efficiently predict which videos a user will request, thereby providing a real time video-on-demand experience while still maintaining reduced bandwidth latencies as supported by Kim (e.g. abstract).

Buxton-Kim do not expressly disclose that the distributable content is set to expire after a predetermined time, wherein each subscriber that requested the distributable content is charged for the transmission over the first network, but not over the second network. In analogous art, Lockridge discloses another VOD system which discloses expiring distributable content after a predetermined time if not enough clients have viewed the content (§ 25), and that subscribers are charged for the transmission over the first network, but not over the second network (i.e. users are charged to purchase the PPV movie, however once it is stored at the VOD headend unit, the user can watch movies which are stored in the VOD unit for free) (§ 22: "orders a PPV program"; § 28: "when a client requests a recording...the client is not charged an additional recording fee"). It would have been obvious to one of ordinary skill in the art to combine the teaching of Lockridge with Buxton-Kim in order to incorporate Pay-Per-View systems described in the prior art with the Video-On-Demand system described in Buxton-Kim in order to realize the benefits described in Lockridge, specifically to allow the user to rewind and review sections found in Pay-Per-View movies, greatly enhancing the user's viewing experience.

Nomura discloses another video-on-demand system wherein the distributable content expires after a set rental period, where it will be made inaccessible or unviewable (col. 4, lines 25-34). It would have been obvious to one of ordinary skill in the art to combine the teaching of Nomura with Buxton-Kim in order to increase security

of the VOD system of Buxton-Kim in order to prevent hacking of the system as well as to ensure proper accounting for particular movie rentals.

4. Referring to claims 2 and 3, Buxton discloses the invention substantively as described in claim 1. Buxton does not specifically disclose the first network is the Internet and a backbone link, however using the Internet backbone is a well known use to connect a central server with regional local nodes. By this rationale, "Official Notice" is taken that both the concept and advantages of using the Internet backbone instead of a proprietary fiber line is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Buxton to utilize the Internet backbone in order to reduce the costs associated with the upkeep of a fiber line to all the local nodes, instead of a simple network access card connectable to the Internet.

5. Referring to claim 4, Buxton discloses the collection engine comprises a DSLAM (i.e. DSL switching unit) (Figure 5, ref. 502).

6. Referring to claim 5, Buxton discloses the second network comprises a DSL connection (Figure 5, ref. 508; p. 6, ¶ 49).

7. Referring to claim 6, Buxton discloses the collection engine comprises a cable head end (i.e. local node 506) (Figure 5; p. 4, ¶ 34).

8. Referring to claim 7, Buxton discloses the second network comprises a cable modem connection (i.e. connection between local node 106 via coaxial cable line to residential gateway 114 which inherently uses a cable modem) (Figure 1).

9. Referring to claim 8, Buxton discloses the collection engine comprises a wireless interface (i.e. wireless switching unit 510 and radio tower 515) (Figure 5; p. 6, ¶ 49-50).

10. Referring to claim 9, Buxton discloses the invention substantively as described in claim 9. Buxton does not disclose that the wireless network operates on a standard described in 802.11a, b, or g, however these are widely known standards for wireless networking and one of ordinary skill in the art would find it obvious to utilize these standards. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for an 802.11 a, b, or g interface for the wireless network of Buxton is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Buxton since Buxton does not specifically recite any standard to the RF wireless communication system used in Figure 5, this would provide one of ordinary skill in the art to search the art for standards in RF networking technology, eventually finding these standards known for their interoperability and ease of use.

11. Referring to claims 10-13, Buxton discloses the embodiment of a cable modem and head end as described in claim 1. Buxton does not specifically disclose that the local node can be a central telephone office or an optical head end and the second network can be a dial-up modem connection or a fiber optic connection, however these mediums and communication devices are well known for carrying data over links to subscribers. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for the use of a central telephone office or an optical head end is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Buxton to include a central telephone office or an optical head end since Buxton does disclose the use of DSL connections over twisted pair as well as wireless networking embodiments of the invention (§§ 49-50). This would provide sufficient motivation to utilize the invention over other types of networks, eventually finding the well known telephone and optical networks widely known and used.

12. Referring to claim 14, Buxton discloses the collection engine comprises a server (i.e. anything which serves anything to anything can be construed as a server.

13. Referring to claim 15, Buxton discloses the second network comprises a LAN or a MAN (i.e. the local node can handle 500 to 1000 homes via cable, which fits the definition of a LAN or a MAN) (p. 4, ¶ 34).

14. Referring to claim 16, Buxton discloses the content storage comprises a database (i.e. any hard disk can be construed as a database since it stores data in a relational manner) (p. 2, ¶ 19).

15. Referring to claim 19, Buxton discloses the subscriber receives the content at a viewing device (i.e. set top processing unit connected to a television or a residential gateway connected to a TV or a PC) (Figure 5, ref. 505, 514).

16. Referring to claim 20, Buxton discloses that the device comprises local storage (i.e. it is inherent that if data is streamed as is disclosed in Buxton, ¶ 48, then the receiver, such as the set top box or residential gateway must include some local storage to buffer the stream for display to a user) (¶ 48).

17. Claim 21 is rejected for similar reasons as stated above.

18. Referring to claim 25, Buxton discloses the subscriber activates the viewing of the distributable content via a key mechanism (i.e. transaction in order to receive the data such as a pay-per-view situation) (p. 5, ¶ 43-44).

19. Referring to claim 26, Buxton discloses the key mechanism authenticates via the first network (i.e. transaction processing server authorizes the user to receive the multimedia data) (p. 5, ¶ 43-44).

20. Referring to claims 27 and 28, Buxton discloses the distributable content is digitally encoded video (i.e. encrypted video) (p. 1, ¶ 12).

21. Referring to claim 29, Buxton discloses the subscriber subscribes to the content provider (i.e. authorized to receive the content data) (p. 5, ¶ 43-44).

22. Referring to claim 30, Buxton discloses the subscriber receives the content on a pay-per-use basis (i.e. pay-per-view video-on-demand systems) (p. 4, ¶ 32; p. 5, ¶ 43-44).

23. Referring to claim 31, Buxton discloses the invention substantively as described in claim 1. Buxton does not specifically disclose that there is more than one content provider, however it has been held obvious to duplicate parts for multiple effects, see *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 (7th Cir. 1977). By this rationale, it would have been obvious to one of ordinary skill in the art to modify the system of Buxton to provide multiple content providers, thereby provide multiple redundant content providers to ensure reliability to the particular content.

24. Referring to claim 34, Buxton discloses the invention substantively as described in the claims above. Buxton further discloses receiving requests from subscribers in a subscriber group (i.e. it can be construed that the subscribers connected to a particular

local node 106 can be considered a subscriber group) (Figures 1 and 4), storing data on a viewing device of a subscriber (i.e. set top box) (§ 13). Buxton does not explicitly state that the distributable content from a content provider based on subscriber requests, wherein the distributable content comprises a subset of the distributable content corresponding to requests from subscribers in the subscriber group. In analogous art, Kim discloses another VOD system which discloses the distributable content is distributed to set top boxes based on subscriber group requests, thereby predicting what is popular and what the user is more likely to want to view (e.g. abstract; Figure 4; p. 5, § 70). Kim further discloses downloading data on a predetermined schedule on a pay-per-use basis (i.e. downloading popular content monthly) (§ 70). It would have been obvious to one of ordinary skill in the art to combine the teachings of Kim with Buxton in order to efficiently predict which videos a user will request, thereby providing a real time video-on-demand experience while still maintaining reduced bandwidth latencies as supported by Kim (e.g. abstract).

25. Claims 34-49, 52-54, 58-62, 64-66, are rejected for similar reasons as stated above.

Claims 23, 24, 56, 57, and 80-84, 87-89, 91, and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton-Kim-Lockridge in view of Simec et al. (US 2004/0010717) (hereinafter Simec).

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26. Referring to claims 23 and 24, Buxton discloses the invention substantively as described in claim 21. Buxton does not specifically disclose the content is selectively controlled via digital rights management. In analogous art, Simec discloses another video-on-demand system which discloses the use of DRM to prevent unauthorized reproduction or usage (p. 2, ¶ 22). It would have been obvious to one of ordinary skill in the art to combine the teaching of Buxton with Simec in order to prevent the unauthorized usage of the movies stored on the subscriber devices, thereby preventing hacking and BORE (Break once, read everywhere) copying, thereby ensuring the proper payment is received.

27. Claims 56, and 57 are rejected for similar reasons as stated above.

28. Referring to claim 80, Buxton-Kim-Lockridge discloses the invention as described in the claims above. Buxton-Kim-Lockridge does not specifically disclose activating the content using a key mechanism. In analogous art, Simec discloses another VOD system which discloses distributing decryption keys to end clients in order to activate the video content (¶ 52). It would have been obvious to one of ordinary skill in the art to combine the teaching of Buxton with Simec in order to prevent the unauthorized usage of the movies stored on the subscriber devices, thereby preventing hacking and BORE (Break once, read everywhere) copying, thereby ensuring the proper payment is received.

29. Claims 81-84, 87-89, 91, and 92 are rejected for similar reasons as stated above.

Claims 93-98, 100-102, 104-110, and 113-120, are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton-Kim-Lockridge in view of Rodriguez et al. (US 2003/0005454) (hereinafter Rodriguez).

30. Referring to claim 93, Buxton discloses the invention substantively as described in claim above. Buxton-Kim-Lockridge further discloses reproducing a viewable list of the distributable content that is dynamically updated to include popular content (i.e. the P500 list is a list of popular titles that are stored in the devices) and the list can be displayed to the user (Kim: p. 5, ¶ 70; p. 9, ¶ 111). Buxton does not specifically disclose the use of a user interface configured to permit the subscriber to receive the distributable content. In analogous art, Rodriguez discloses another video on demand system (e.g. abstract) which discloses the use of a GUI to permit the subscriber to receive the distributable content (Figures 21-26). It would have been obvious to one of ordinary skill in the art to combine the GUI system of Rodriguez with the digital distribution system of Buxton in order to allow the subscribers of Buxton the efficient use of the GUI management controls offered by Rodriguez to order and download videos.

31. Claims 94 and 95 are rejected for similar reasons as stated above.

32. Referring to claim 96, Buxton-Kim-Lockridge-Rodriguez further disclose downloading the data as a background task, and providing this information in a GUI selectable option (Figures 23-26, options to download the file when data is not being transferred, thereby being transferred in the background, otherwise it would be transferred immediately).
33. Claims 97-99, 102-106 are rejected for similar reasons as stated above.
34. Referring to claim 107, Buxton-Kim-Lockridge-Rodriguez disclose executing a viewing authorization module to process a key for viewing the content, and viewing the content when the key is validated (Rodriguez: Figure 28, authorization of a PIN to purchase the movie, if validated, the movie will then be downloaded and viewed).
35. Referring to claim 109, Buxton-Kim-Lockridge-Rodriguez further disclose the use of receiving the content at selectable times (see rejections above), and providing a GUI to download the content at selectable times (Figures 23-27).
36. Claims 110-113, and 116-120, are rejected for similar reasons as stated above.

Claims 100, 101, 114, 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton-Kim-Lockridge-Rodriguez in view of Simec.

37. Referring to claims 100 and 101, Buxton-Kim-Lockridge-Rodriguez discloses the invention substantively as described in claim 99. Buxton-Kim-Lockridge-Rodriguez does not specifically disclose the content is selectively controlled via digital rights management. In analogous art, Simec discloses another video-on-demand system which discloses the use of DRM to prevent unauthorized reproduction or usage (p. 2, ¶ 22). It would have been obvious to one of ordinary skill in the art to combine the teaching of Buxton-Kim-Lockridge-Rodriguez with Simec in order to prevent the unauthorized usage of the movies stored on the subscriber devices, thereby preventing hacking and BORE (Break once, read everywhere) copying, thereby ensuring the proper payment is received.

38. Claims 114, 115 are rejected for similar reasons as stated above.

Claims 135, 136, 144, and 146-148 are rejected under 35 USC 103(a) as being unpatentable over Buxton-Kim-Lockridge-Rodriguez in view of Nomura et al. (USPN 7,254,622) (hereinafter '622).

39. Referring to claim 135, Buxton-Kim-Lockridge-Rodriguez discloses the invention as described in the previous claims. Rodriguez discloses the GUI providing selectable options to receive the content at selectable times on a pay per use basis(see rejections above), to receive the content as a background task (i.e. the data is downloaded in the background as long as it is finished before a certain time) (see rejections above), and

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presents a security dialog to receive a key to authorize the subscriber to view the content (i.e. PIN) (see rejections above). Buxton-Kim-Lockridge-Rodriguez do not explicitly state that the content is set to expire after a set number of viewings, rather a predetermined time. In analogous art, '622 discloses another VOD system which discloses expiring content after a specified number of viewings (col. 4, lines 25-33). It would have been obvious to one of ordinary skill in the art to combine Buxton-Kim-Lockridge-Rodriguez with '622 by replacing the content expiration system of Buxton-Kim-Lockridge-Rodriguez with the content expiration system described in '622 in order to realize the benefits described in '622, specifically to simplify the expiration system by knowing only how many times the content was viewed, instead of knowing what time the content was downloaded, the expiration time, and the current time, greatly reducing processing requirements.

40. Claims 144, 146-148 are rejected for similar reasons as stated above.

Response to Arguments

41. Applicant's arguments dated December 10, 2007 have been considered but are moot in view of the new ground(s) of rejection.

42. Applicant argues the validity of the Examiner's statement of Admitted Prior art as failing to seasonably challenge Examiner's assertion of "Official Notice". The Examiner disagrees. MPEP 2144.03 plainly states that ***if applicant does not traverse the***

examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action **that the common knowledge or well-known in the art statement is taken to be admitted prior art** because applicant **either failed to traverse the examiner's assertion of official notice** or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. Applicant has failed to traverse the examiner's assertion of Official Notice, and therefore the statement is taken to be admitted prior art. Applicant has no standing to traverse these statements. As dictated by MPEP 2144.03, the Examiner has provided in the subsequent Office Action that the statements are taken to be admitted prior art. Applicant has not cited any case law, nor has provided any persuasive arguments which permit the Applicant to traverse statements of "Official Notice" after the Examiner has taken the statement to be admitted prior art. By this rationale, the rejections are maintained.

Conclusion

43. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

44. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

45. Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph E. Avellino/
Joseph E. Avellino, Primary Examiner
January 18, 2008